

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:22-cv-00241-MR**

DAVID LYNN ANDERSON,)	
)	
Plaintiff,)	
)	
vs.)	
)	
FNU BARKER, et al.,)	ORDER
)	
Defendants.)	
)	

THIS MATTER is before the Court on the Plaintiff's Letter, which is liberally construed as a Motion to set aside the Clerk's Entry of Default [Doc. 27].

The pro se Plaintiff filed the Complaint pursuant to 42 U.S.C. § 1983 addressing an incident that allegedly occurred at the Rutherford County Jail. [Doc. 1]. The Second Amended Complaint passed initial review against Defendant Barker for the use of excessive force. [Docs. 15, 16]. Defendant Barker answered and asserted a Counterclaim for battery against the Plaintiff. [Docs. 18, 20]. The Plaintiff failed to timely answer or otherwise respond to the Counterclaim, and the Defendant filed a Motion for Entry of Default on November 21, 2023. [Doc. 22]. The Clerk entered a Default in the Court's record on December 1, 2023. [Doc. 26].

On December 4, 2023, the Clerk docketed a Letter from Plaintiff in which he claims that he was never served with the Defendant's Counterclaim, and that default should not be entered against him. [Doc. 28]. On January 16, 2024, the Court notified the Defendant that it would construe the Letter as a Motion to set aside the Clerk's Entry of Default, and granted the Defendant 14 days to explain why the Default should not be set aside. [Id.]. The Defendant has now filed a Response stating that he does not object to the Plaintiff's request to set aside the Clerk's Entry of Default.¹ [Doc. 29].

In light of the Defendant's Response, the Clerk will be instructed to set aside the Default [Doc. 26]. The Plaintiff shall have 14 days from the date of this Order to answer or otherwise respond to the Defendant's Counterclaim. [Doc. 18].

IT IS, THEREFORE, ORDERED that:

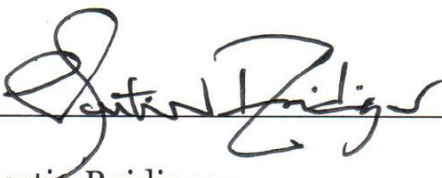
1. The Plaintiff's Letter [Doc. 27], which is construed as a Motion to set aside the Clerk's Entry of Default, is **GRANTED**.
2. The Clerk is instructed to **SET ASIDE** the Entry of Default [Doc. 26].

¹ Because the Defendant has not objected to the Plaintiff's request to set aside the Default, the Plaintiff need not file a reply. [See Doc. 28 (Order granting Plaintiff 14 days to reply to the Defendant's Response)].

3. The Plaintiff shall answer or otherwise respond to the Defendant's Counterclaim [Doc. 18] within **fourteen (14) days** of this Order.

IT IS SO ORDERED.

Signed: January 22, 2024



Martin Reidinger
Chief United States District Judge

